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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/643,105	08/18/2003	Mark A. Criss	TELN . P0113USE	3350
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MARK D. SARALINO (GENERAL) RENNER, OTTO, BOISELLE & SKLAR, LLP 1621 EUCLID AVENUE, NINETEENTH FLOOR CLEVELAND, OH 44115-2191			APPIAH, CHARLES NANA	
			ART UNIT	PAPER NUMBER
			2686	

DATE MAILED: 03/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/643,105	Applicant(s) CRISS ET AL.	
	Examiner Charles Appiah	Art Unit 2686	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-11 and 13 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by **Beasley et al. (5,699,275)**.

Regarding claims 1 and 13, Beasley discloses a method of operation in a wireless communication system comprising a system backbone, a host computer (manager host 16, client hosts 18, 20) coupled to the system backbone, at least one base station coupled to the system backbone the at least one base station including a base station transceiver (inherent features of communication network such as wireless communication network like the cellular telephone network, see col. 2, line 61 to col. 3, line 2), for communicating wireless with mobile devices within the system, and at least one mobile device (mobile units 22-30), having a mobile device transceiver (see col. 6, lines 25-36), for communicating wirelessly with the host computer on the system backbone via the at least one base station, comprising the steps of: storing a version of operating software that provides instruction code in the at least one mobile device, the operating software when executed, allowing the at least one mobile device to carry out its intended function (first flash bank and second flash bank being operable to store operating code for execution by processor, see col. 6, lines 52-56), determining whether

the version of operating software stored in the at least one mobile device is a current version of the operating software (mobile unit comparing the software version provided by the initial patch message with the software version of the mobile unit's current operating code, see col. 10, lines 37-45), and wirelessly updating the operating software stored in the at least one mobile device if it is determined that the operating software stored in the at least one mobile device is not a current version (see col. 10, line 46 to col. 11, line 30).

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 5, 7, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Beasley et al. (5,699,275)** in view of **Park (5,909,581)**.

Regarding claim 5, Beasley meets all limitations as applied above to claim 1. Beasley further discloses the step of at least one mobile device downloading the current version of the operating software (see col. 13, lines 9-25), but fails to specifically disclose an FTP server coupled to the system backbone from which the current version of the operating software is downloaded.

Park discloses an automatic software updating method which includes a server using FTP protocol in which new software is only downloaded when required through a comparison of version codes of downloaded version-up table and a previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with Beasley's system in order to ensure efficient use of communication resources by providing updates only when desired or needed.

Regarding claim 6, Beasley discloses a wireless communication system (see Fig. 1, communication network such as wireless communication network like the cellular telephone network, see col. 2, line 61 to col. 3, line 2), comprising: a system backbone (inherent in cellular telephone network), a host computer (manager host 16, client hosts 18, 20) coupled to the system backbone, at least one base station (inherent in cellular telephone network) coupled to the system backbone, the at least one base station including a base station transceiver (inherent to cellular telephone network), communicating wirelessly with mobile devices (166), within the system, and at least one (mobile units 22-30), having a mobile device transceiver (see col. 6, lines 25-36) for communicating wirelessly with the host computer on the system backbone via the at least one base station. Beasley further discloses the capability of the system to wirelessly update or transfer data to portable communication by storing a version of operating software that provides instruction code in the at least one mobile device, the operating software when executed, allowing the at least one mobile device to carry out its intended function (first flash bank and second flash bank being operable to store operating code for execution by processor, see col. 6, lines 52-56), determining whether the version of operating software stored in the at least one mobile device is a current version of the operating software (mobile unit comparing the software version provided by the initial patch message with the software version of the mobile unit's current

operating code, see col. 10, lines 37-45), and wirelessly updating the operating software stored in the at least one mobile device if it is determined that the operating software stored in the at least one mobile device is not a current version (see col. 10, line 46 to col. 11, line 30), but fails to explicitly teach the use of FTP server coupled to the system backbone in the communication system as well as the host computer requesting from the mobile device indicia indicative of a version of mobile operating software that provides instruction code is stored in the at least one mobile device and when executed, allows the at least one mobile device to carry out its intended function and wherein the host computer and the at least one mobile device are operatively are configured to determine whether to selectively update mobile device operating software there between based on an initial comparison in accordance with a predetermined criteria indicative of whether updating of the mobile device operating software is appropriate and the FTP server and the at least one mobile device are operatively configured to communicate selectively the mobile device operating software determined to be appropriate for updating.

In an analogous field of endeavor, Park discloses an automatic software updating method which include a server using FTP protocol and in which new software is only downloaded when required through a comparison of version codes of downloaded version-up table and previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with the Beasley's system in order to ensure efficient use of

communication resources by providing updates only when desired or needed thus conserving resources.

Regarding claim 7, the combination of Beasley and Park shows wherein the initial comparison includes a comparison of an indicia of a version of mobile device operating software stored in the host computer and an indicia of a version of mobile device operating software presently stored in the mobile device as taught by Beasley (see col. 10, lines 33-42 and Park, col. 3, lines 25-58).

Regarding claim 8, Beasley as modified by Park inherently disclose that the initial comparison is carried out by the host computer based on indicia information provided by the mobile device as taught by Park since downloading and installation of the new software from the Bps to the PCS is only carried out when the version code of downloaded version-up table is the same as preset code value (step 370 to 380, FIG. 3).

Regarding claim 10, the combination of Beasley and Park further discloses as taught by Park that in the event the version of mobile device operating software stored in the mobile device is different from the version of mobile device operating software stored in the host computer, the host computer request the mobile device to download updated operating software from the FTP server (see col. 1, lines 42-64, col. 4, lines 15-25).

Regarding claim 11, the combination of Beasley and Park further teaches wherein the mobile device replaces the mobile device operating software presently

stored therein with the mobile device operating software provided from the FTP server (see col. 3, lines 25-58).

5. Claims 2, 4 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Beasley et al** applied to claim 1 above, and further in view of **Halliwell et al. (5,473,772)**.

Regarding claims 2, 4 and 9, Beasley fails to disclose the steps of the host computer requesting from the at least one mobile device indicia indicative of a version of mobile device operating software stored in the at least one mobile device, the at least one mobile device transmitting the indicia indicative of version of mobile device operating software stored in the at least one mobile device, the host computer receiving the indicia indicative of the version of mobile device operating software stored in the at least one mobile device and the host computer determining whether updating of the mobile device operating software is appropriate based on an initial comparison in which the indicia indicative of the mobile operating software stored in the at least one mobile device is compared to an indicia of the current version of mobile device operating software, wherein the indicia information provided by the mobile device is provided in response to a request by the host computer for such indicia information.

Halliwell discloses a data processing network having a first processor and a second processor linked by a communication system as illustrated in Fig. 1 (see col. 1, line 65 to col. 2, line 12), whereby the most up-to-date version(s) of a file or files available at the first processor are downloaded from the second processor when it is determined that the appropriate files are not available at the first processor (see col. 2,

lines 54-62) wherein the comparison is carried out either at the first processor or second processor (col. 5, lines 2-40).

It would therefore have been obvious to one of ordinary skill in the art to incorporate the automatic update system of Halliwell into the system of Beasley in order to provide an updating facility as part of a shared control logic in order to augment and/or replace existing files when required as taught by Halliwell.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Beasley et al and Halliwell et al** as applied to claim 2 above, and further in view of **Park (5,909,581)**.

Regarding claim 3, the combination of Beasley, and Halliwell fails to teach the step of the host computer requesting from the at least one mobile device indicia indicative of a version of mobile device operating software occurs following completion of a boot-up routine during which the at least one mobile device establishes an identity in the wireless communication system.

Park discloses an automatic software updating method which includes a server using FTP protocol in which new software is only downloaded when required through a comparison of version codes of downloaded version-up table and a previously stored version-up table (see col. 1, lines 42-64, col. 4, lines 15-25), wherein an automatic connection between the Bps and the host after initialization with the loading of the version-up table and the subsequent comparison of version codes for determination whether to download a software (see col. 3, lines 51-58).

It would therefore have been obvious to one of ordinary skill in the art to combine the teaching of Park with Beasley as modified by Halliwell in order to ensure efficient use of communication resources by providing updates only when desired or needed thus conserving resources.

Allowable Subject Matter

7. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Double Patenting

8. Claims 1 and 13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,735,434. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the limitations of claims 1 and 13 are broad enough to be encompassed by the limitations of claims 1-17 of the patent.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Appiah whose telephone number is 703 305-4772. The examiner can normally be reached on M-F 7:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha Banks-Harold can be reached on 703 305-4379. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CA


CHARLES APPIAH
PRIMARY EXAMINER